

OGC Has Reviewed

Acting Executive

28 January 1949

General Counsel

Leave Regulations

1. We believe that the memorandum of the Personnel Officer, dated 27 January, presents a fair picture of a practical situation. We, however, approach the problem on a slightly different basis.

2. We feel that although a right may not in practice be enforced by the individuals concerned, it is, none the less, a right so long as it remains on the statute books as presently worded. We believe, therefore, that the right to leave under the Act of March 14, 1936, as amended (5 U.S.C. 302) is absolute. The Civil Service Commission appears to agree to the extent that an employee, theoretically, has recourse to the Court of Claims if the matter were brought to an issue. If our interpretation is correct (and we believe the Comptroller General's Opinions support us), the further words of the statute that such leave shall be granted at such times as the heads of establishments may prescribe, give a control, but also impose a duty to see that such times are prescribed. It would obviously be an administrative absurdity to let a situation arise which would give grounds for possible action in the Court of Claims, when such a situation is easily avoided.

3. Thus, it is a common practice early in the year for offices to ask their employees when they would prefer to take leave, and after the employees' wishes are known, the administrative officers set up leave schedules. Such a procedure would normally eliminate any difficulty under the Act. If an employee refuses to specify a time, he can be ordered on leave at a time convenient to the Government. This Agency follows the normal Government practice of encouraging the taking of leave. Once the time for leave has been set, the Government's duty has been completed (unless, of course, it changes its plans before leave is taken). Then if the employee, for reasons of his own, refuses to take the leave as specified, he waives any right to claim leave at a different time under the Act, as this is clearly the type of protection which the employee is free to waive for reasons of his own.

4. It seems most improbable that the situation would arise where an employee came to the last 26 working days of the year without asking for leave, being directed to take leave, or, by one measure or another, waiving leave. But if this specific situation arose, we still believe that the employee has a right to take those 26 days as annual leave, and that, even if it were administratively disapproved, and, possibly, pay were withheld by the Comptroller General, he could recover, in the Court of Claims, the amount of withheld pay and would be entitled to continue his same employment without being subject to any technical charge of misfeasance.

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cc: Chrono  
Subject File  
✓Local Decisions